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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

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Plaintiff,

No. CR 24-00475 WHA

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v.

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TIMOTHY JEFFREY,

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Defendant.

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

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Defendant Timothy Jeffrey moves to dismiss the two Section 922(g)(1) felon-in-possession charges in his indictment (Case No. 24-00475) and corresponding Form 12 charges (Case No. 12-00216 and Case No. 16-00002). He argues that Section 922(g)(1) is unconstitutional as applied to him because, *first*, our circuit law affirming the constitutionality of Section 922(g)(1) was abrogated by *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, and *second*, Section 922(g)(1) fails the “history and tradition” test set out in *Bruen*.

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The undersigned considered and denied a substantially similar argument in another Section 922(g)(1) prosecution, *United States v. Aguilera*. No. CR 23-00217 WHA, 2024 WL 4778044 (N.D. Cal. Nov. 12, 2024). Defendant’s arguments fail for the same reasons. *First*, our circuit’s precedent, *United States v. Vongxay*, is still controlling. 594 F.3d 1111 (9th Cir. 2010); *Aguilera*, 2024 WL 4778044, at *3-8. While there is some tension between *Vongxay*

1 and *Bruen*, they are not “clearly irreconcilable.” *Close v. Sotheby’s, Inc.*, 894 F.3d 1061, 1074
2 (9th Cir. 2018) (“Nothing short of ‘clear irreconcilability’ will do.”). *Second*, if *Vongxay* was
3 not controlling, Section 922(g)(1)’s application to defendant would pass muster under *Bruen*
4 given his six prior felony convictions, including felony taking of a vehicle without consent,
5 receipt of stolen property, escape from federal custody, and conspiracy to distribute and
6 possession with intent to distribute methamphetamine. *See Aguilera*, 2024 WL 4778044, at
7 *8-14.

8 Following oral argument, the undersigned afforded defense counsel an opportunity to file
9 a supplemental brief attempting to distinguish the present motion from *Aguilera* (Dkt. No. 26).
10 As an initial matter, defendant does not challenge that order’s holding that *Vongxay* — under
11 which his motion must be denied — controls. As to *Aguilera*’s subsequent application of the
12 *Bruen* test, the arguments made do not move the needle.

13 *First*, defendant points out that “[i]n *Aguilera*, there appears to be at least an initial issue
14 of whether the 2nd Amendment is applicable to non-citizens,” while here, defendant is “an
15 American citizen by birth” (*id.* at 1). True, but *Aguilera* “assume[ed] (without deciding) that
16 the Second Amendment extends to unlawful aliens.” *Aguilera*, 2024 WL 4778044, at *8.
17 Defendant’s distinction makes no difference.

18 *Second*, defendant argues that his convictions are “for non-violent offenses,” and not for
19 burglaries, as was the case in *Aguilera* (Dkt. No. 26 at 2). *Aguilera* explained that “the
20 historical precedents [therein] extended to all manner of crimes, not only ‘crimes of violence,’”
21 because “[l]aws imposing capital punishment and estate forfeiture did not treat the degree of
22 violence accompanying the underlying act as determinative of sentence severity.” *Id.* at 14.
23 The notion, moreover, that defendant’s felony conviction for conspiracy to possess
24 methamphetamine with the intent to distribute is “non-violent” is incorrect: “Like burglary or
25 robbery, drug trafficking plainly poses substantial risks of confrontation that can lead to
26 immediate violence.” *United States v. Alaniz*, 69 F.4th 1124, 1130 (9th Cir. 2023). Even the
27 since-vacated panel decision striking down Section 922(g)(1) as applied to a defendant
28 convicted of vandalism conceded that drug traffickers could be disarmed. *United States v.*

1 *Duarte*, 101 F.4th 657 (9th Cir.), *reh'g en banc granted, opinion vacated*, 108 F.4th 786 (9th
2 Cir. 2024). Defendant's convictions are more than enough to bring him within the ambit of
3 *Aguilera*'s analysis.

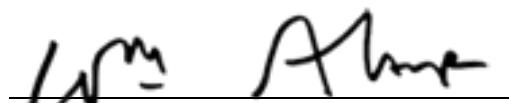
4 Finally, the bulk of defendant's supplemental briefing takes issue with the methodology
5 laid out in *Bruen*, arguing that "both *Bruen*, and its successor case, *United States v. Rahimi* . . .
6 appear to be more results driven than based on actual historical precedent" (Dkt. No. 26 at 2-
7 4). That argument misunderstands the role of the district courts and is not considered here.
8 *Hutto v. Davis*, 454 U.S. 370, 375 (1982) ("[U]nless we wish anarchy to prevail within the
9 federal judicial system, a precedent of this Court must be followed by the lower federal courts
10 no matter how misguided the judges of those courts may think it to be.").

11 Defendant's motion is **DENIED**.

12 **IT IS SO ORDERED.**

13 Dated: February 2, 2025.

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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE